NO. 82283-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ROBIN M. FREEMAN
N/K/A ROBIN ABDULLAH
Petitioner

and

ROB R. FREEMAN
Respondent

PETITIONER'S SUPPLEMENTAL BRIEF

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A. INTRODUCTION

In this case, the court is asked to decide when and by what means a permanent domestic violence protection order may be vacated. Because the order is "permanent," and in order to serve the purpose of the Domestic Violence Prevention Act, nothing less than satisfaction of the CR 60 standard should suffice. Here, the trial court effectively applied that standard to deny the motion to vacate. The Court of Appeals' decision to the contrary should be reversed and the trial court's order affirmed.

B. SUPPLEMENTAL STATEMENT OF ISSUES PRESENTED

1. Should the party seeking to vacate a permanent protection order bear the burden of proof and persuasion?

2. Should that burden be the same as for motions to vacate under CR 60?

3. Should an appellate court review a trial court's denial of a motion to vacate under an abuse of discretion standard?

4. Does a protected party need to establish an objectively reasonable current fear either to renew a protection order or to resist a motion to vacate a permanent protection order?

5. Do time and distance, as a matter of law, negate either a current fear of harm or the justification for a permanent protection order?

C. SUPPLEMENTAL STATEMENT OF THE CASE

1. IN 1998, ROBIN PROVED DOMESTIC VIOLENCE AND PROVED THAT, WITHOUT AN ORDER, DOMESTIC VIOLENCE WAS LIKELY TO RESUME.

In 1998, as the Freeman marriage was ending, Robin sought an order of protection. CP 76-79. She alleged Rob had committed multiple instances of domestic violence. CP 7-11, 25-28, 78. She was granted an ex parte temporary order by Thurston County Commissioner *Pro Tem* Underwood. CP 82-83. At a hearing, another court commissioner (Chris Wickham) took extensive testimony from both Robin and Rob. CP 6-32.

Regarding the allegation that Rob had sexually assaulted Robin, the commissioner withheld judgment, finding that it would be necessary to have testimony from Robin's children and from medical care providers to sort out what had happened. CP 31 ("I do not presume to speculate as to what the evidence would or would not show ..."). However, the commissioner was persuaded that Rob had assaulted his step-daughter and had inflicted fear on Robin by displaying his weapons during an argument, which was particularly frightening given Rob's training as a Green Beret. CP 31, 84. See, also, CP 32 (commissioner acknowledging Rob "has been trained to use force and to use weapons of force"). Rob had conceded many of the essential facts of these incidents, though denying some of the particulars. CP 13, 20.

The commissioner entered a permanent order of protection, mindful of the ramifications of such orders "over the years." CP 31 ("I wouldn't want those ramifications to occur without good cause."). The order included a finding "that the respondent committed domestic violence as defined in RCW 26.50.010." CP 85. According to the statute, in pertinent part, "'[d]omestic violence" means: ... Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; ..." RCW 26.50.010(1)(a). See Appendix. The order was made permanent based on the court's finding "that an order of less than one year will be insufficient to prevent further acts of domestic violence." CP 87. *See* RCW 26.50.060(2) (requring court to find respondent "likely to resume acts of domestic violence" to enter permanent order).

Rob did not appeal the order. Unappealed findings are verities. *In re Disciplinary Proceeding Against Tasker,* 141 Wn.2d 557, 566, 9 P.3d 822 (2000).[1]

2. IN 2006, ROB FAILED TO PROVE THE PERMANENT ORDER SHOULD BE TERMINATED.

In 2006, Rob moved to "modify/terminate" the order for protection. CP 4-5. The asserted grounds for the motion were:

[1] From the docket, it appears the exhibits, which included photographs of bruises on Robin, were destroyed in 2004. Thurston Co. #98-2-00171-0.

> The order was entered 8 years ago. The 12 month expiration provision was not in effect at that time. The reason that the judge entered a permanent order, was because he believed that my military training made me different from other people and required a higher standard of conduct on my part. ...
>
> Since the order was entered, I was severely injured in combat. I lost a hand and other injuries. Those injuries are such that re-training became necessary. Many of the positions for which I now qualify require a security clearance that is not possible given this permanent restraining order. The effect of the restraining order seems very severe, given that I have had no contact with my ex-wife since the order was entered, live in another state, have had no law violations of any kind and simply do not pose any kind of danger to anyone at this time.

CP 4-5.

At a hearing on his motion, Robin's daughter, the victim of Rob's assault, testified, and Robin submitted a sworn statement. CP 43-46, 88-92. Rob, the moving party, did not appear; he submitted a written declaration. CP 34-36.[2] Focussing first on events during his marriage to Robin and surrounding the protection order, Rob declared himself innocent of any wrongdoing. CP 34-35. He claimed Robin had never been afraid of him and that any harm to her "has been done by her to herself." CP 34. He said that after entry of the protection order, while he was still in Washington, "it would have been nearly impossible" for him to violate its restraints, and said that he did not. CP 35. After leaving the

[2] The declaration omits where and when (i.e., location, date) it was signed and does not attach a GR 17 affidavit.

state, he argued no one could "seriously believe that [he] would take what little time & money [he] had to risk [his] career by traveling 2,400+ miles to play the kind of games described by Robin." CP 35. He also said he "was seriously injured in 2001." CP 36. He declared that he "continue[d] to have neither the inclination nor the ability to do anything to Robin" and that he had not been in Washington since 1998. CP 36. He claimed the protection order has "a serious negative affect [sic] on my ability to earn a living." CP 36.

In her sworn statement, Robin described various unsettling events "that have affected [her]" since entry of the order. CP 89. These events stopped after Rob left for Kentucky. CP 89. She further complained of being "harassed from afar" through various financial entanglements, because her name remained associated with Rob's. CP 89. She also described "strange things" occurring at her house, though separated by increasingly long intervals. CP 89. She did not attribute these to Rob, but declared herself "terrified of this man" and asked to maintain the protection order "[f]or my safety and the safety of my children." CP 90.

Robin's daughter testified. She confirmed she had been a victim of Rob's domestic violence. CP 43. She described seeing Rob after entry of the order while she was at high school; in one instance, Rob watched her from across the street and, in a second instance, he was in the student

parking lot. CP 44. (The order prohibited Rob from coming within 1000 feet of the daughter. CP 86.)[3] She said she was "fairly scared at the time, constantly on the lookout because of the other things that he had done to us ..." Id. She said she continued to be "scared" even after moving away to attend college and law school. Id. She has never, for example, listed her telpehone number. Id. She said she remained in fear of Rob. CP 44. She said other "weird stuff" had happened since entry of the order, including people trying to break into the house while she was there, "but nothing that I can say was for sure him." CP 45-46.

Robin's counsel argued the burden of proof was on Rob and that his client "got a permanent restraining order" and would like "to maintain" the order. CP 47. He observed that "[we] as a society decided we don't want people to commit domestic violence and have guns," either privately or professionally (e.g., as a security guard or police officer). CP 47.

Rob's counsel argued there was no evidence of contact over the past six years and that Rob had "gone on with his life." CP 47.

A commissioner (Anne Hirsch) denied Rob's motion finding that he had "failed to show the order should be terminated." CP 38. The commissioner entered extensive findings, including a finding that the

[3] The school and vicinity, along with a distance measurement scale, can be viewed at http://maps.google.com/maps?client=safari&rls=en-us&q=timberline%20high%20school%20washington&oe=UTF-8&um=1&ie=UTF-8&sa=N&hl=en&tab=wl (last viewed May 30, 2009).

daughter was credible and she is "currently in fear" of Rob. CP 54, 55. The commissioner also found that Robin is "currently in fear" of Rob. CP 54. The commissioner declared Rob had failed to carry his burden, since "the mere passage of time without any other showing" is inadequate "to lift a person's reasonable fears" of being revictimized. CP 55. Rob unsuccessfully sought revision. CP 60-61.

3. THE COURT OF APPEALS REVERSED.

Rob appealed and Division Three reversed the trial court's order denying his motion to vacate, disagreeing that it was reasonable for Robin to continue to fear Rob. *In re Freeman*, 146 Wn. App. 250, 256, 192 P.3d 369 (2008). The court applied the test for renewing a protection order, meaning Rob had the burden, "at a minimum," to prove "he will more likely than not refrain from resuming acts of domestic violence." 146 Wn. App. at 255. The court then reviewed the facts from both the 1998 and 2006 hearings. In characterizing the 1998 hearing, the court declared "[a]t worst, the past acts in this case involve an assault to the then-16-year-old daughter and a perceived threat of the use of firearms." 146 Wn. App. at 256. The Court said there was "no evidence that Rob had hurt his wife or the other children at anytime." *Id.*, at 258. (In fact, in addition to the proven infliction of fear,-Robin alleged other abusive incidents, but the trial court did not base the protection order on those. See, e.g., CP 25-30.

See, also, CP 44 (daughter in 2006 referring to "the other things that he had done to us").

The Court of Appeals declared it was not Rob's conduct, but "Robin's concern regarding [his] firearms and military training that inflicted the fear of imminent harm, injury, or assault." 146 Wn. App. at 256. (The trial court in its oral ruling found Robin was afraid "based on the previous incidents involving her daughter and the incidents involving weapons ... and because of her husband's training and abilities and access to weapons it is reasonable that she should be concerned." CP 31.) The court discounted the daughter's sightings of Rob across the street from her school and in the school parking lot because it was "unclear from the record whether Rob actually violated the order," since Robin did not attempt to prosecute him. *Id.*, at 257-258. (Actually, the record is silent on whether they complained to the authorities about these events.)

The court noted that to renew an order it is sufficient for a petitioner to show "a past history of abuse or threatened abuse plus present fear." 146 Wn. App. at 255. However, the court declared, "that fear must still relate to a threat of *imminent* harm, injury, or assault." *Id.*, at 257. In other words, the harm, injury or assault must remain imminent to justify a victim's continuing fear. The court concluded that "[h]ere, due to time and distance, there is no evidence to support a current fear that physically

harmful acts or threats of imminent harm would occur upon lifting the order." *Id.*, at 257. The court disagreed with the trial court that Rob had proved only "the mere passage of time." *Id.*, at 258. He had shown "a compelling need for lifting the order and a lack of opportunity for contact." *Id.* Here, the court added, there was "no evidence" Rob had ever hurt Robin or her other children "at anytime." *Id.*

The court denied Robin's request for attorney fees.

D. ARGUMENT

1. INTERPRETATIONS OF THE DOMESTIC VIOLENCE PREVENTION ACT MUST SEEK TO EFFECTUATE THE ACT'S PURPOSE.

The first principle of statutory interpretation is to fulfill the Legislature's intent. *State v. Elgin,* 118 Wn.2d 551, 555, 825 P.2d 314 (1992). Here, that intent is clear: to prevent domestic violence. When the Legislature enacted the statute it determined that "domestic violence must be addressed more widely and more effectively in our state." RCW 26.50.030 (legislative findings). In particular, protection orders are meant "to reduce and prevent domestic violence by intervening before the violence becomes severe." *Id.* It is "the legislature's intent to intervene *before* injury occurs." *Spence v. Kaminski*, 103 Wn. App. 325, 334, 12 P.3d 1030 (2000), *citing State v. Dejarlais*, 136 Wn.2d 939, 944, 969 P.2d 90 (1998). Accordingly, when determining whether and how a permanent

protection order may be terminated, the standards must serve this goal of preventing further violence, which includes preventing further infliction of fear. RCW 26.50.010(1). See Appendix.

2. THE STANDARDS FOR VACATING A PERMANENT PROTECTION ORDER SHOULD BE ONEROUS AND SHOULD REQUIRE THE MOVING PARTY ALONE BEAR THE BURDEN OF PROOF AND PERSUASION.

The Domestic Violence Prevention Act is silent on the subject of vacating permanent protection orders. It is not even clear that the act permits such orders to be vacated. Indeed, the entire authority for Rob's motion is one sentence in RCW 26.50.130 that allows a court to "modify the terms of an existing order for protection."[4] Accordingly, the standard for modifying or vacating a permanent protection order must be inferred from the purpose of the act, other mechanisms in the act, and more general legal mechanisms. This analysis leads to the conclusion that the moving party alone bears the burden and should be required to prove a basis to vacate under CR 60.

[4] The next sentence in the provision speaks of an order "terminated or modified before its expiration date," which could suggest the provision applies only to orders of fixed duration. It simply is not clear. Moreover, in 2008, this provision was amended by the insertion of various service requirements between these two sentences, further complicating analysis of the text. See Appendix.

3. HAVING PREVAILED IN THE FIRST INSTANCE, A PARTY PROTECTED BY A PERMANENT PROTECTION ORDER HAS NO BURDEN. RATHER, THE MOVING PARTY BEARS THE BURDEN OF PROOF AND PERSUASION.

As a general matter, moving parties bear the burden of proof. *See, e.g., Teller v. APM Terminals Pacific, Ltd.,* 134 Wn. App. 696, 142 P.3d 179 (2006) (burden on party seeking to have pleading amendment relate back and to justify failure to timely amend); *Parrott Mechanical, Inc. v. Rude, et al,* 118 Wn. App. 859, 864, 78 P.3d 1026 (2004) (moving party bears burden of proof on summary judgment). Application of this general principle here comports with the purpose of the DVPA, as well as with the burden-assigning provisions in the act.

For example, to obtain a permanent protection order, a petitioner bears the entire burden and must prove both the occurrence of domestic violence and that the perpetrator of domestic violence is "likely to resume acts of domestic violence" in the absence of an order. Robin satisfied these burdens in 1998. The court's findings and the protection order itself are *res judicata. Kemmer v. Keiski,* 116 Wn. App. 924, 68 P.3d 1138 (2003).

If, instead of a permanent order, a petitioner obtains an order of fixed duration, the petitioner who seeks renewal bears the initial burden to "state reasons." RCW 26.50.060(3). The statute does not specify what

kind of reasons. Twice, the Court of Appeals has upheld renewal orders based on a showing of past violence and present fear. *Spence v. Kaminski, supra; Barber v. Barber,* 136 Wn. App. 512, 516, 150 P.3d 124 (2007). Though such a showing may be sufficient, the statute does not require it. By the statute's plain language, a petitioner could state other reasons supporting renewal.

In any case, the statute and the case law agree that the renewal-seeking petitioner need not prove again what she proved in the first instance (i.e., domestic violence). Rather, having stated her "reasons" for renewal, the burden shifts to the perpetrator to prove by a preponderance that he will not resume domestic violence. The statute does not offer what kinds of proof would suffice to meet that burden and there is no Washington case where a perpetrator has met that burden.

A permanent order, by its terms, does not need to be renewed. Accordingly, it would not make sense to apply the renewal standard to an effort to vacate a permanent order. Rather, in this circumstance, it can be inferred that (1) the protected party bears no burden, not even to "state reasons" for maintaining the order, since the order is "permanent"; (2) the perpetrator bears the burden to justify vacating the order; and (3) he must prove something more than what is *res judicata* (i.e., he must prove something more than that he is not likely to resume acts of domestic

violence, since the converse was already proved when the permanent protection order issued).[5]

The first of these propositions is evident from the statute, which imposes no burden whatsoever on a party protected by a permanent order. This likewise harmonizes with the purposes of the DVPA, which must necessarily include protection against a perpetrator repeatedly hailing a protected party into court on motions to modify or vacate protection orders, with all the expense, inconvenience, and anxiety incidental to such litigation. *See* RCW 26.50.040 Legislative Findings (1992) ("Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.").

The second proposition follows from the first and from general principles of legal procedure, as noted above. The party seeking to vacate the protection order bears the burdens of proof and persuasion.

The third proposition is more complicated, because there is less in the statute to answer what must be proved to justify vacating a permanent order of protection. But the lack of a mechanism in the statute also means

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[5]Put another way, to obtain a permanent order, a petitioner must prove "the respondent is likely to resume acts of domestic violence ..." RCW 26.50.060(2) (emphasis added). To resist renewal of an order, the respondent must prove the converse: that he will not resume acts of domestic violence. RCW 26.50.060(3) (emphasis added).

something and leads to the conclusion that the same standard should apply to motions to vacate permanent protection orders as applies to motions to vacate judgments generally, i.e., CR 60. See Appendix. The advantages of this solution are many.

4. TO VACATE A PERMANENT PROTECTION ORDER, THE MOVING PARTY SHOULD SATISFY CR 60.

Adopting CR 60 as a standard respects principles of finality, which should apply with equal, if not greater, force to orders expressly made "permanent." Indeed, only in this way is the term "permanent" rendered meaningful, protecting domestic violence victims from onerous and distressing "reruns" of their protection order proceedings. *See State v. Cooper,* 156 Wn.2d 475, 483, 128 P.3d 1234 (2006) (every word in a statute must be given meaning).

CR 60 sets the bar high enough to discourage harassing litigation yet allows deserving parties to obtain relief in a way that is structured and equitable, with the guidance of case law. Thus, orders procured fraudulently could be vacated at any time. Or, within the first year, where newly discovered evidence undermines confidence in the judgment. Or where "it is no longer equitable that the judgment should have prospective application." In short, CR 60 would provide redress where justice

requires while also providing a clear standard. The need for such clarity is manifestly evident in the Court of Appeals decision.

5. THE COURT OF APPEALS USED THE INCORRECT STANDARD FOR REVIEW.

Despite what it said, the Court of Appeals engaged in de novo review of trial court decisions, decisions that were based in large part on creditbility determinations. *See Spence,* 103 Wn. App. at 330 (trial court's finding that vicitm was fearful "not reviewable by this court"). Indeed, though the 1998 facts are verities, the Court of Appeals revisited them, finding, for example, that Rob had not "hurt" Robin or the other children. The court minimized the assault about the daughter and the infliction of fear on Robin through the display of weapons ("at worst ..."), and ignored that there was evidence of other incidents ("no evidence of"). Essentially, the court made its own factual findings to supplant the ones made by the trial court in 1998.

The court did so again with respect to the findings from 2006. For example, the daughter testified to seeing Rob at her school after entry of the protection order. The trial court acknowledged that testimony and found the daughter credible. CP 55-56. Working in the area, perhaps the commissioner knew whether being across the street from the front of the school and being in the parking lot placed Rob in violation of the

protection order's 1000 feet limit. In any case, this Court has declared trial courts to be in the better position to decide factual questions. *See In re Jannot,* 110 Wn.2d 16, 21, 37 P.3d 1265 (2002). Yet the Court of Appeals discounted these contacts, despite that it is the trial court's role to resolve any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of witnesses. *State v. Camarillo,* 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Altogether, the appellate court simply ignored the facts as found at trial and reread them.

6. THE COURT OF APPEALS APPLIED THE WRONG LEGAL STANDARD BY REQUIRING PROOF OF AN OBJECTIVELY REASONABLE CURRENT FEAR.

The court applied to Rob's motion the standard that applies when a respondent resists renewal of an order. That cannot be correct, as discussed above, since it renders the word "permanent" meaningless, violates principles of finality, and undermines the DVPA's purpose by allowing protection order "do overs," without limitation. The CR 60 standard should apply.

Not only did the court apply the renewal standard to Rob's motion to vacate a permanent order, the court incorrectly interpreted what the renewal standard requires. When the court said Rob had to prove he was not likely to resume acts of domestic violence, the court read that standard as requiring an "objectively reasonable" and current fear. 146 Wn. App.

at 255-256. First, the statute does not impose this standard even in the renewal context. Several cases have found proof of past violence and current fear *sufficient* to justify renewal, but neither case has said this is what must be proved as "reasons" for renewal. That is, proof of current fear may be sufficient, but the statute does not require it. In any case, a party protected by a permanent order does not even have the burden to "state reasons."

In any case, to require a "current fear" in either the renewal or permanent context undermines the purpose of the DVPA, as is made clear by how the Court of Appeals implemented that requirement in this case, which reveals a fundamental misunderstanding and misplacement of the statute's imminence provision.

The DVPA describes six forms of domestic violence: physical harm; bodily injury; assault; and infliction of fear of imminent physical harm, bodily injury or assault; sexual assault; and stalking. As the Court of Appeals acknowledged, there is no requirement of a recent act for any of these forms of domestic violence. *Spence,* 103 Wn. App. at 333. With respect to the "infliction of fear" form, there has been no requirement that the fear be "objectively reasonable" per se. Rather, the statute requires two other things: the fear must be of "physical harm, bodily injury or assault" (i.e., the other forms of domestic violence) and the harm, injury or

assault must be "imminent." Proof of these facts renders fear "objectively reasonable."

Robin proved this form of domestic violence in 1998. As a first principle, she should not have to prove it again. That is, if by requiring proof of an objectively reasonable current fear the court is merely restating the requirements of "infliction of fear," then this issue is *res judicata.* As the commissioner noted in rejecting Rob's motion to vacate, the legislature did not intend for victims to have to "prove year after year that they are still a victim." CP 55-56.

Moreover, proof of current fear, reasonable or otherwise, is not even a requirement for petitioners seeking to renew orders, as noted above. They need only state reasons. It makes no sense to require more of a victim defending against a challenge to a permanent protection order than one who seeks to renew an order.

Finally, requiring proof of a current fear, reasonable or otherwise, leads to an absurdity: that protection orders are justified only so long as they fail to assuage a victim's fear. For example, a victim seeking renewal of an order might give as her reason that the order makes her feel safe. Absurdly, the Court of Appeals would render these orders, permanent or of fixed duration, subject to termination because the victim is no longer in a state of fear. This interpretation would make a mockery of the DVPA by

making the protection offered victims contingent on them remaining afraid. Put another way, this interpretation expresses what many domestic violence victims already fear: that the orders they obtain do not actually protect them and they should take no comfort in them.

7. TIME AND DISTANCE DO NOT NEGATE FEAR.

Even if proof of current fear was somehow a requirement for renewal of an order and the lack of current fear (from an objectively reasonable perspective) the basis for vacating a permanent order, the Court of Appeals still reached the wrong result here. The court declared, as a matter of law, that time and distance create a lack of opportunity for domestic violence, so that, proving time and distance necessarily negates a victim's current fear, or *should* negate it (i.e., telling the victim it is no longer reasonable to be afraid). This standard would make countless permanent protection orders subjection to termination and simply cannot be harmonized with the statute, which could have, but did not, provide for expiration upon proof of having moved out of state and compliance with the order. And rightly so. Domestic violence perpetrators do not merely seize opportunities, they make them.

E. CONCLUSION

The trial court correctly ruled that Rob had failed to carry his burden to prove a basis for vacating the permanent protection order. This

ruling should have been reviewed for an abuse of discretion. For these reasons, Robin asks this Court to reverse the decision of the Court of Appeals and require that those who seek to vacate permanent protection orders should satisfy the requirements of CR 60. Accordingly, she asks the trial court be affirmed and that she be awarded her attorney fees and costs.

Dated this 1st day of June 2009.

RESPECTFULLY SUBMITTED,

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PATRICIA NOVOTNY, WSBA #13604
Attorney for Petitioner

APPENDIX: STATUTES AND COURT RULES

RCW 26.50.010. Definitions

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

CREDIT(S)

[2008 c 6 § 406, eff. June 12, 2008; 1999 c 184 § 13; 1995 c 246 § 1. Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.]

RCW 26.50.060. Relief--Duration--Realignment of designation of parties--Award of costs, service fees, and attorneys' fees

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;

(f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees;

(h) Restrain the respondent from having any contact with the victim of

domestic violence or the victim's children or members of the victim's household;

(i) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(j) Consider the provisions of RCW 9.41.800;

(k) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and

(l) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be

made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in *subsection (1)(f) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

CREDIT(S)

[2000 c 119 ß 15; 1999 c 147 ß 2; 1996 c 248 ß 13; 1995 c 246 ß 7; 1994 sp.s. c 7 ß 457. Prior: 1992 c 143 ß 2; 1992 c 111 ß 4; 1992 c 86 ß 4; 1989 c 411 ß 1; 1987 c 460 ß 55; 1985 c 303 ß 5; 1984 c 263 ß 7.]

RCW 26.50.130. Order--Modification--Transmittal[1]

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection. In any situation where an order is terminated or modified before its expiration date, the

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[1] This statute was amended in 2008 to include service provisions and now reads as follows:

RCW 26.50.130. Order--Service--Modification--Transmittal

(1) Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection.

(2) Except as provided in RCW 26.50.085 and 26.50.123, personal service shall be made upon the nonmoving party not less than five court days prior to the hearing to modify.

(a) If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123.

(b) The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the moving party requests additional time to attempt personal service.

(c) If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order permitting service by publication or by mail.

(3) In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

CREDIT(S)

[2008 c 287 § 3, eff. June 12, 2008; 1984 c 263 § 14.]

clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

CREDIT(S)

[1984 c 263 ß 14.]

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise

vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) *Motion.* Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) *Notice.* Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) *Service.* The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) *Statutes.* Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

CREDIT(S) [Amended effective September 26, 1972; January 1, 1977.]